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SUPREME COURT  
STATE OF WASHINGTON  
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THE SUPREME COURT OF WASHINGTON

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SUPREME COURT NO. 96655-9  
COURT OF APPEALS NO. 76576-1-I

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GREAT OCEAN CAPITAL HOLDING, LLC, a Washington limited liability company; HUY YING CHEN and XUE PING WANG, Husband and Wife Residing in Washington State;

Petitioners.

v.

YANLU LIU and AI HUA PAN, Husband and Wife Residing in King County, Washington;  
PENG ZHANG and ZHONGYUAN PAN, Husband and Wife Residing in Ontario, Canada,

Respondents,

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Respondents' Response in Opposition to Petitioners' Motion for Extension of Time

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## I. INTRODUCTION

Petitioners fail to demonstrate a “gross miscarriage of justice” under RAP 18.8(b). Simply put, Petitioners present no facts that illustrate extraordinary circumstances to extend the time within which Petitioners may file a Reply to Respondent’s Answer to the Petition for Review. Furthermore, under RAP 13.4(d), Petitioners are not entitled to file a reply because they do not seek review of any new issues raised in the answer.

Petitioners have a history of frivolous filing in this Court and the lower courts. Petitioners also have a pattern of wholly disregarding court rules and should be sanctioned under Rule 18.9. Notably, Petitioners unsuccessfully filed a Motion for Extension of Time to File Discretionary Review one day late and tried to claim they miscalculated the deadline. As the court correctly ruled, a mistake in calculating the deadline is not a circumstance beyond a party’s control.

Furthermore, instead of timely filing a Reply to the Answer, the Petitioners willfully chose to file a severely untimely Motion to Disqualify counsel, nearly four years after the commencement of this case in the King County Superior Court. The Petitioners have a history of frivolous and untimely filings with this court and show a willful disregard for the court rules.

Because Petitioners' arguments are not grounded in law or in fact, their Motion for Extension of Time must be denied in its entirety.

A. Identity of Respondents

Respondents, (collectively as the "Respondents" or Plaintiffs") are Yanlu Liu and Ai Hua Pan, Zhongyuan Pan and Peng Zhang.

II. RESPONSE TO PETITIONERS' MOTION FOR EXTENSION OF TIME TO FILE DISCRETIONARY REVIEW AND MOTION FOR DISCRETIONARY REVIEW

- (1) Petitioners are Not Entitled to an Extension of Time Because They Fail to Present Extraordinary Circumstances, and No Miscarriage of Justice Exists if They Do Not Receive an Extension of Time.
- (2) Petitioners are Not Entitled to File a Reply.
- (3) Petitioners Should Be Sanctions Under RAP 18.9 for Violation of Rules.

III. LEGAL ANALYSIS

A. Petitioners' Motion For Extension Of Time Must Be Denied Because Petitioners Fail To Demonstrate A "Gross Miscarriage of Justice" Under Rap. 18.8(b).

RAP 18.8(b) states, in relevant part:

"The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section."

In *Pybas v. Paolino*, 73 Wn. App. 393, 401, 869 P.2d 427 (1994) the Court of Appeals explained the purpose of the rule as follows: “RAP 18.8(b), by limiting the extension of time to file a notice of appeal to those cases involving ‘extraordinary circumstance and to prevent a gross miscarriage of justice’, expresses a public policy preference for the finality of juridical decisions over the competing policy of reaching the merits in every case. “Extraordinary circumstances” include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control. *Hoirup v. Empire Airways, Inc.*, 69 Wn. App. 479, 482, 848 P.2d 1337 (1993); *Reichelt v. Raymark Indus. Inc.*, 52 Wn. App. 763, 765, 764 P.2d 653 (1988). The standard set forth in the rule is rarely satisfied. *Scannell v. State*, 128 Wn.2d 829, 833-34, 912 P.2d 489 (1996)(citing *Reichelt*) See also *Schaefco Inc. v. Columbia River Gorge Comm’n*, 121 Wn.2d 366, 849 P.2d 1225 (1993).

Here, Petitioners’ failure to timely file their answer was due to lack of due diligence and willful disobedience of court orders and the Rules of Appellate Procedure. Petitioners chose to file a frivolous and severely untimely Motion to Disqualify counsel instead of a Reply to Respondent’s Answer. Petitioners’ willfully disobeyed the RAPs and the court’s letter which clearly informed both parties of the deadlines for all Petitions,

Answers, and Replies. Accordingly, the Petitioner's motion must be denied.

B. Petitioners Are Not Entitled To File A Reply.

RAP 13.4(d) states that a reply to an answer to a petition for review must be filed "within 15 days after the service on the party of the answer." In this case, as the court correctly noted in the April 1, 2019 letter, Respondents served the Answer to the Petition for review on February 7, 2019. Therefore, any reply was due on February 22, 2019. The reply was not filed until well over a month later on March 29, 2019.

Furthermore, under RAP 13.4(d), a reply to an answer should be limited to addressing only the new issues raised in the answer. Petitioners' Answer does not seek review of any such issues. Therefore, they are not entitled to file a reply.

C. Petitioners Should Be Sanctions Under RAP 18.9 For Violation of Rules.

RAP 18.9 permits the imposition of sanctions for frivolous appeals. Here, Petitioners have a history of frivolous filing in this court and disobedience of court rules and should be sanctions under Rule 18.9. Notably, Petitioners unsuccessfully filed a Motion for Extension of Time to File Discretionary Review one day late, and then tried to claim they

miscalculated the deadline. As the court correctly ruled, a mistake in calculating the deadline is not a circumstance beyond a party's control.

Furthermore, instead of timely filing a Reply to the Answer, the Petitioners willfully chose to file a severely untimely Motion to Disqualify counsel, nearly four years after the commencement of this case at the Superior Court. The Petitioners have a history of frivolous and untimely filings with this court and show a willful disregard for the court rules. Accordingly, under Rule 18.9, Petitioners should be sanctioned.

#### IV. CONCLUSION

Petitioners present no extraordinary circumstances that entitle them to an extension of time to file the Motion for Discretionary review. Accordingly, this court should deny Petitioner's Motion for Discretionary Review and Motion for Extension of Time to Reply to Discretionary Review in its entirety.

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Respectfully submitted this 8th day of April, 2019.

MDK Law

*/s/ Courtney D. Bhatt*

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**DECLARATION OF SERVICE**

I certify that on April 8, 2019, I caused a true and correct copy of the foregoing to be served on the following in the manner indicated below:

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Dated: April 8, 2019

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**MDK LAW**

**April 08, 2019 - 1:25 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96655-9  
**Appellate Court Case Title:** Yanlu Liu, et al. v. Great Ocean Capital Holding, LLC, et al.  
**Superior Court Case Number:** 15-2-28694-3

**The following documents have been uploaded:**

- 966559\_Answer\_Reply\_20190408132445SC565403\_4669.pdf  
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